

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

RYAN TIESZEN Plaintiff, vs. EBAY, INC., LG CHEM LTD., VAPAH, INC., and FIRST DOE through THIRTIETH DOE, Defendants.	4:21-cv-04002-KES ORDER DENYING DEFENDANTS' MOTION TO DISMISS AND MOTION TO STAY PROCEEDINGS
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Defendant eBay, Inc. moves to dismiss co-defendant LG Chem LTD.'s crossclaim on the basis that the complaint fails to state a claim upon which relief can be granted. Docket 71; see Fed. R. Civ. P. 12(b)(6). Alternatively, eBay moves this court to stay the action pending arbitration of Tieszen's claims against eBay. Docket 72 at 12. For the following reasons, the court denies eBay's motion to dismiss and alternative motion to stay proceedings.

FACTUAL BACKGROUND

This case arises out of plaintiff, Ryan Tieszen's, purchase of two LG lithium-ion batteries from a third-party seller, Vapah, Inc., over eBay's online marketplace. Docket 1-1 ¶¶ 2, 11. Tieszen sustained injuries after the batteries allegedly "burst into flames" while in his pocket. *Id.* ¶ 12. Tieszen subsequently filed suit in the State of South Dakota Second Circuit Court for Minnehaha County. Docket 1-1. Tieszen alleged products liability, negligence, and breach of express and implied warranties against defendants eBay, LG Chem, Vapah,

LG Chem America, Inc. (LGCAI) and unnamed Doe defendants. Docket 1-1 ¶¶ 33-110. LGCAI removed the case to federal court under 28 U.S.C. §§ 1332, 1441(b), and 1446. Docket 1. LGCAI was later dismissed from the case for lack of personal jurisdiction. Docket 47.

Pursuant to an agreement to arbitrate in the eBay user agreement, eBay moved to compel arbitration. Docket 17. This court granted eBay's motion to compel arbitration and stayed Tieszen's claims against eBay. Docket 52 at 15.

LG Chem also moved to dismiss Tieszen's claim for lack of personal jurisdiction. Docket 29. This court denied that motion and its motion for reconsideration, but granted its motion for certification of an interlocutory appeal. Docket 55. The United States Court of Appeals for the Eighth Circuit, however, denied LG Chem's petition for permission to appeal. Docket 57; Docket 59. LG Chem then filed an answer to Tieszen's complaint in which it also asserted a crossclaim for indemnity and contribution against all co-defendants. Docket 66 at 32-33. On April 21, 2022, eBay filed a motion to dismiss LG Chem's crossclaim, or in the alternative, stay proceedings pending arbitration of Tieszen's claims against it. Docket 71. On May 12, 2022, LG Chem filed an amended crossclaim as a matter of right. Docket 73; *see* Fed. R. Civ. P. 15(a)(1)(B).

DISCUSSION

When an amended crossclaim is filed, it supersedes the original crossclaim, meaning the original crossclaim no longer has any legal effect. *See Thomas v. United Steelworkers Loc. 1938*, 743 F.3d 1134, 1139 (8th Cir. 2014).

As a result, a motion to dismiss the original crossclaim is moot after an amended crossclaim is filed. *Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952, 956 (8th Cir. 2002); *see also Onyiah v. St. Cloud State Univ.*, 655 F. Supp. 2d 948, 958 (D. Minn. 2009) (“[A]s a general proposition, if a defendant files a Motion to Dismiss, and the plaintiff later files an Amended Complaint, the amended pleading renders the defendant’s Motion to Dismiss moot.”). Here, within 21-days of eBay’s motion to dismiss, LG Chem filed an amended crossclaim as a matter of right omitting eBay as a third-party defendant. Docket 73; *see* Fed. R. Civ. P. 15(a)(1)(B). The only difference between the amended pleading and the original is the omission of eBay as a third-party defendant in LG Chem’s crossclaim in the amended pleading. Docket 73; Docket 66. Thus, eBay’s motion to dismiss or, alternatively, stay proceedings (Docket 71), is denied as moot. It is

ORDERED that eBay’s motion to dismiss, or alternatively to stay proceedings (Docket 71), is denied as moot.

Dated July 21, 2022.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE